

COPY

AO 241 (Rev. 5/85)

PETITION UNDER 28 USC § 2254 FOR WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY

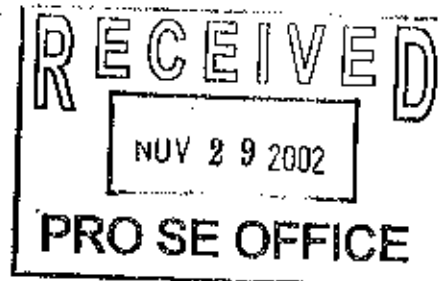
United States District Court		District Eastern District Of N.Y.	
Name LORENZO McGRIFF	Prisoner No. 93-A-5465	Case No. 7901/92	
Place of Confinement WYOMING CORRECTIONAL FACILITY, P.O. BOX 501 Attica, New York 14011-0501			
Name of Petitioner (include name under which convicted) LORENZO McGRIFF, Petitioner,		Name of Respondent (authorized person having custody of petitioner) M.E. Giambruno, Superintendent +	
The Attorney General of the State of: Elliot Spitzer			

PETITION

BLOOMING

- Name and location of court which entered the judgment of conviction under attack Kings County
Supreme Court 360 Adams Street, Brooklyn, N.Y. 11201
- Date of judgment of conviction June 28, 1993
- Length of sentence 8 1/3 to 25 yrs.
- Nature of offense involved (all counts) 2 counts Murder 2nd degree(P.L. § 125.25[1],
[2], 2 counts attempted Murder 2nd degree(P.L. §§ 110.00/ 125.25[1],
one count criminal possession of a weapon 2nd degree(P.L. § 265.03),
one count criminal possession of weapon 3rd degree (P.L. § 265.02[4],
- What was your plea? (Check one) / one count reckless endangerment first degree
(P.L. § 125.20[1]).
(a) Not guilty ☐
(b) Guilty ☒
(c) Nolo contendere ☐
If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:
N/A

- If you pleaded not guilty, what kind of trial did you have? (Check one)
(a) Jury ☐ N/A
(b) Judge only ☐
- Did you testify at the trial?
Yes ☐ No ☐ N/A
- Did you appeal from the judgment of conviction?
Yes ☐ No ☐



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9. If you did appeal, answer the following:

App

(a) Name of court Appellate Division Second DepartmentAffirmed(b) Result (c) Date of result and citation, if known June 5, 1995, 216 AD 2d 330 (2nd Dept. 1995).(d) Grounds raised Trial Court's Abuse of Discretion and excessive sentence, Petitioner Prose ineffective assistance of counsel.

(e) If you sought further review of the decision on appeal by a higher state court, please answer the following:

New York Court of Appeals.(1) Name of court Denied Leave to Appeal(2) Result (3) Date of result and citation, if known August 16, 1995, 86 NY 2d 798 (Cliparick, J.).(4) Grounds raised same as direct Appeal.

(f) If you filed a petition for certiorari in the United States Supreme Court, please answer the following with respect to each direct appeal:

N/A(1) Name of court N/A(2) Result N/A(3) Date of result and citation, if known N/A(4) Grounds raised 10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal?
Yes ☐ No ☐

11. If your answer to 10 was "yes," give the following information:

Appellate Division: Second Department.(a) (1) Name of court Error Coram nobis(2) Nature of proceeding (3) Grounds raised Appellate Counsel's failure to raise ineffectiveness of trial counsel.

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(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☒

N/A

(5) Result

N/A

(6) Date of result

(b) As to any second petition, application or motion give the same information:

(1) Name of court Kings county supreme court(2) Nature of proceeding CPL § 440.10(1)(h)

(3) Grounds raised Reargument of ineffective assistance claim, alleging that counsels assistance were ineffective during the taking of the plea proceeding and at the plea withdrawal hearing.

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☒

N/A

(5) Result

N/A

(6) Date of result

(c) Did you appeal to the highest state court having jurisdiction the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes ☒ No ☐(2) Second petition, etc. Yes ☒ No ☐

(d) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

N/A

12. State concisely every ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

CAUTION: In order to proceed in the federal court, you must ordinarily first exhaust your available state court remedies as to each ground on which you request action by the federal court. If you fail to set forth all grounds in this petition, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed if you have exhausted your state court remedies with respect to them. However, you should raise in this petition all available grounds (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The petition will be returned to you if you merely check (a) through (j) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.
- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: Prosecution's withholding of Challengable material evidence.

U.S. Const., Amend. XIV, VI

Supporting FACTS (state briefly without citing cases or law): The Prosecution withheld the
Ballistics Unit Microscopic Analysis Report, which failed to conform with the
Pre-requisite that such evaluative reports bear certification and, or authenticat-
ion of the person deligated with such duties, inviolation of petitioner's Due
Process and Confrontational Rights under the 14th, 6th Amend. of the U.S. Const.,
S
See, Attached Affirmation in support of facts, and CPL § 440.10, Notice of Mot-
ion for Leave to Appeal. Exhibit(s) (A),(B),(C).

B. Ground two: Petitioner Received Ineffective Assistance, U.S. Const., Amend.
VI.

Supporting FACTS (state briefly without citing cases or law): Petitioner's right to effective
assistance of counsel were " inadvertently violated when the prosecution failed
to disclose the Microscopic Analysis Report, which deprived the defense of the
opportunity to challenge the legality of the admissibility of such material evi-
dence. See, CPL§§ 440.10 Exhibit's (B).

C. Ground three: Trial Court's Abuse of Discretion, U.S. Const., Amend.

XIV.

Supporting FACTS (state briefly without citing cases or law): The Lower courts Denial of petitioner's motion to vacate judgment were errorus, Arbitrary and Capricious and Abuse of discretion, in that allowing in to evidence and relying on improper material evidence that were in every sense prejudicial to petitioner it violated the stipulation of his request for the issuance of a Judicial subpoena. See, Affirmation in support of facts and subpoena duces tecum Exhibit (E) (A) and (D).

D. Ground four

Supporting FACTS (state briefly without citing cases or law):

13. If any of the grounds listed in 12A, B, C, and D were not previously presented in any other court, state or federal, state briefly what grounds were not so presented, and give your reasons for not presenting them: (C) Trial Court's Abuse of Discretion; this ground was not presented in the courts below because the Leave to Appeal to the Appellate Division were Denied without an opinion.

14. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack?
Yes ☐ No ☒

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing

N/A

N/A

(b) At arraignment and plea

N/A

- (c) At trial _____ N/A
- (d) At sentencing _____ N/A
- (e) On appeal _____ N/A
- (f) In any post-conviction proceeding _____ N/A
- (g) On appeal from any adverse ruling in a post-conviction proceeding _____ N/A

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?

Yes ☐ No ☒

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☐ No ☒

(a) If so, give name and location of court which imposed sentence to be served in the future: _____

N/A

(b) Give date and length of the above sentence: _____ N/A

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes ☐ No ☒

Wherefore, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.


Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

11/7/2002
(date)


Signature of Petitioner